

Colette K. Bohatch, Esq.
1575 Eye Street, N.W.
Suite 300
Washington, D.C. 20005

EX PARTE OR LATE FILED

Telephone: 202/289-8400

Facsimile: 202/289-8450

August 26, 1998

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED
AUG 26 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Communications,
In the Matter of Federal-State Joint Board on Universal
Service, CC Docket No. 96-45 and DA Docket No. 98-977

Dear Ms. Salas:

Pursuant to 47 C.F.R. § 1.1206, this letter notifies interested persons that Mark Nadel of the Federal Communications Commission's Accounting Policy Division communicated with me concerning the above-captioned dockets. On August 20, he requested additional information related to the "Motion for Declaratory Ruling or, Alternatively, Petition for Waiver by the State of Florida Department of Management Services" and discussed the Schools and Libraries Corporation Web site. On August 26 on behalf of the Florida DMS, I submitted to the Commission the enclosed written information.

Enclosed please find the requisite three copies of this letter and the enclosure to satisfy the filing requirements in each of the dockets. Please date-stamp the fourth copy and return it to the messenger for delivery to me. Thank you.

Sincerely,



Colette K. Bohatch
Counsel for
State of Florida
Department of Management Services

Enclosures

cc: Mr. Mark Nadel

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. Mark Nadel
Accounting Policy Division
Federal Communications Commission
2100 M Street, N.W., 8th Floor
Washington, D.C. 20554

Re: Florida DMS Telecommunications Procurement Practices,
In the Matter of Federal-State Joint Board on Universal
Service, CC Docket No. 96-45 and DA Docket No. 98-977 ✓

Dear Mr. Nadel:

In our telephone conversation of August 20, you requested additional information related to the Motion for Declaratory Ruling or, Alternatively, Petition for Waiver filed on May 11, 1998, by my client, the State of Florida Department of Management Services (the Florida DMS). In particular, you asked some questions concerning the Florida DMS's telecommunications procurement practices and procedures. On behalf of the Florida DMS, I have prepared this letter to provide you the requested information.

A. Background

In its motion, the Florida DMS seeks a ruling that the renewal of the State's master contracts for telecommunications services pursuant to their terms would not jeopardize their status as "existing contracts" under 47 C.F.R. § 54.511(c) and, thus, their eligibility for Universal Service funds. This motion was made to address an interpretation by the SLC staff that the State's contracts would not be so eligible if the State exercised the (preexisting and limited) renewal options contained in them. The view expressed by the SLC was that the exercise of such options would constitute a "voluntary extension" within the meaning of paragraph (d) of section 54.511. The SLC apparently believes that such extensions would inevitably result in a greater contract cost for the extension period than would rebidding the contract for the same period.

The Florida DMS firmly believes that the documented procedures it follows before exercising its contractual extension options are designed to, and do in fact, negate this very possibility. As described in detail below, the State will exercise a

renewal option if, and only if, its purchasing agents determine that it is in the State's best interest to do so.

B. Questions and Responses

- (1) Why does a Florida telecommunications procurement take so much staff time and money?

The short answer is twofold: the State legislature has mandated an aggressive program of aggregation of telecommunications services over a large and diverse consumer base, and Florida's governmental procurement practices are heavily regulated.

The Florida DMS procures a broad range of commodities and services for State agencies and other governmental entities, but no area of its responsibility is more complex than telecommunications procurement. For years, Florida law has charged the Florida DMS with administration of the SUNCOM Network, which is the telecommunications system for aggregated local and long distance communications service to State agencies, universities, community colleges, libraries, and political subdivisions (such as counties and school districts). See generally Fla. Stat. ch 282. In 1995, the Florida legislature further charged the DMS with providing "advanced" telecommunications services through SUNCOM to more than 5,000 eligible schools, libraries, and rural health care providers. See generally Fla. Stat. ch 364.

The Florida DMS must procure nearly all services offered by SUNCOM on a competitive basis, so as to obtain the best price, terms, and conditions. This statutory requirement is implemented in a comprehensive set of State regulations, and a manual of elaborate desk procedures for staff compliance (Florida DMS, Division of Purchasing Policies and Procedures, Chapter 9). In addition, the Florida DMS procurement decisions are subject to government-in-the-sunshine standards and statutory protest procedures.

To conduct a competitive procurement for telecommunications service contracts takes about four months from start to finish, with some variability depending on the complexity of the contract. The procedure begins with a DMS contract specialist's design of the detailed and precise specifications for the required services, with extensive support from supervisory personnel and the DMS's technology experts. Invitations to bid or requests for proposal are sent to all prospective vendors maintained on the State's comprehensive list; a summary of the proposal is published in the Florida Administrative Weekly. Vendor conferences are held to answer questions. Bids are then received under seal and opened and evaluated under detailed procedures.

Every step of the process is documented according to the regulations and staff procedures, and is subject to review by

State auditors. Thus, the State incurs substantial costs in terms of staff time and out-of-pocket expenses to comply with its rigorous procedures. The DMS estimates the imputed costs of a typical telecommunications contract procurement to range from \$10,000 to \$25,000. If the DMS did not have contracts for aggregated purchases for schools, libraries, and others, the cost of administration of the contracts would increase by an amount calculated by multiplying the number of entities purchasing the services.

Thus, in the complex area of telecommunications procurement, a contract renewal exercised in accordance with State standards can provide a valuable option. It would be manifestly wasteful and foolish for the State to incur rebidding costs if it knows from due diligence that the renewal terms of its existing contract are more favorable than the market currently offers.

This truism is recognized in Federal procurement rules; the Federal Government may include options in its competitively bid contracts to "elect to extend the term of the contract", Federal Acquisition Regulation, 48 C.F.R. §§ 17.201, 202. The option may be exercised if the Government determines that doing so "is the most advantageous method of fulfilling the Government's need, price and other factors . . . considered", id. § 17.207(c)(3); but Federal contracting officers are directed not to conduct a formal procurement simply to "test the market" "if it is anticipated that the best price available is the option price or that this is the more advantageous offer." Id. § 17.207(d)(1).

In that regard, before a renewal option in a Florida contract can be exercised, the cognizant contract manager must prepare a memorandum seeking the approval of the Director of the Division of Purchasing (the most senior Florida procurement official) to do so. The memorandum must explain why the renewal is a superior alternative to rebidding the contract and must document, inter alia, market conditions (i.e., prices) for the service in question and the costs avoided by not rebidding. Florida DMS, Division of Purchasing Policies and Procedures, para. 9.7.15; see, Florida DMS, Division of Purchasing General Regulations, Rule 60A-1.008(2). The memorandum must also include the concurrence of the DMS's technology experts. Id., para. 9.7.15.

Thus Florida's procedure in validating the exercise of a renewal option precisely parallels that required of the Federal Government at the same juncture: "[a]n informal analysis of prices or an examination of the market [that] indicates that the option price is better than prices available in the market or that the option is the more advantageous offer." Federal Acquisition Regulation, 48 C.F.R. § 17.207(d)(2).

- (2) Why doesn't the DMS simply "post" its contract(s) subject to renewal options on the SLC's Web site for bids, and then renew the current contract pursuant to the option if none of the bids received is as good as the terms of the current contract?

The question as stated is answered by the DMS's (and Federal) rationale for not conducting formal bids when, through informal research, the existing contract terms are known to be superior to anything the market is prepared to offer; it is plainly wasteful of taxpayers' money and scarce resources to do so (to say nothing of the resources of the private sector vendors, who would be asked to prepare bootless proposals simply to perfect a record).

If, however, this question is meant to suggest that the DMS use the SLC's Web site as another means of market testing in its determination whether to exercise a renewal option, the DMS does not object in principle to what would be a complementary procedure to those it already follows.

It must be understood, however, that an SLC Web site posting for market testing would not include the precision and details of a formal Florida procurement, otherwise cost avoidance would be vitiated. Further, since any responsive written information would not be contained in a sealed bid, the information would be public and available to all interested parties (including competitors) under Florida law. The DMS must also retain its present exclusive prerogative to determine when informal responses are in good faith and reliable, and when they amount to mere "low-balling" which could not reasonably be expected to materialize in a firm bid in a competitive procurement; and therefore whether to continue to enjoy a current "good deal" offered by an existing contract, or instead to go to market with a formal procurement because the terms of sale of the service are now more favorable to a buyer.

- (3) If the Florida DMS cannot use the SLC Web site posting in connection with a telecommunications procurement, has it sought an amendment of Florida law so that it can use the SLC Web site for this purpose?

The Florida DMS does not believe that its use of the SLC Web site to obtain market information in connection with the potential renewal of a telecommunications contract, as described above (or for that matter, to advertise a formal telecommunications procurement otherwise in accordance to Florida law) requires any amendment of Florida law.

* * *

Please call if you have any further questions about the information submitted here or in the motion. (In accordance with 47 C.F.R. § 1.1206, I have filed an original counterpart and the requisite three copies of this letter to satisfy the ex parte communication filing requirements for the two identified dockets.)

Thank you for your assistance, Mr. Nadel.

Sincerely,

A handwritten signature in cursive script, reading "Colette K. Bohatch". The signature is fluid and stylized, with the first name being the most prominent.

Colette K. Bohatch
Counsel for
State of Florida
Department of Management Services